

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60331-CR-COHN

UNITED STATES OF AMERICA

v.

SCOTT W. ROTHSTEIN,

Defendant.

**UNITED STATES' AMENDED NOTICE OF INTENT TO DISBURSE FUNDS
TO CERTAIN THIRD-PARTY CLAIMANTS AND
RESTITUTION PRIORITY VICTIMS**

The United States of America files this Amended Notice of Intent to Disburse Funds to Certain Third-Party Claimants and Restitution Priority Victims in accordance with the Court's Order Re: 21 U.S.C. § 853(n) Claims [D.E. 579], Order Approving the Stipulation and Settlement Agreement between the United States and Regions Bank [D.E. 597], Order Approving Government's Final Report as to Restitution [D.E. 598], the Order Granting in Part and Denying in Part United States' Motion for Partial Reconsideration [D.E. 637], and the First Final Order of Forfeiture [D.E. 708]. In support, the United States submits as follows:

1. On August 25, 2010, the Court entered an Order Re: 21 U.S.C. § 853(n) Claims [D.E. 579] wherein it recognized the interests of the following third-party claimants: Thirty-Five Non-Investor Clients [D.E. 146-177 and 183-85], Rubin and Sharon Vine [D.E. 206], NF Servicing, LLC [D.E. 266], Edward J. Morse, Carol A. Morse and Morse Operations [D.E. 279], and Todd D. Snyder [D.E. 281] (hereinafter collectively the "third-party claimants"). In the order, the Court found, in pertinent part, that the third-party claimants had a superior interest to that of the Defendant at the

time of the acts that gave rise to the forfeiture in certain amounts contained in or derived from certain bank accounts and ordered the following disbursements:

- a. \$28,085.16 contained in or derived from (BA04) Gibraltar Bank account 50012053 and \$4,221.52 contained in or derived from (BA11) Toronto Dominion Bank, N.A. account 6860420923 shall not be forfeited and shall be transferred to Edward J. Morse, Carol A. Morse and Morse Operations [D.E. 279];
- b. \$213,335.28 contained in or derived from (BA11) Toronto Dominion Bank, N.A. account 6860420923 shall not be forfeited and shall be transferred to Rubin and Sharon Vine [D.E. 206];
- c. \$213,335.28 contained in or derived from (BA11) Toronto Dominion Bank, N.A. account 6860420923 shall not be forfeited and shall be transferred to Todd D. Snyder [D.E. 281];
- d. \$68,798.30 contained in or derived from (BA05) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to NF Servicing, LLC [D.E. 266];
- e. \$10,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Hirbod Samsam [D.E. 147];
- f. \$109,945.93 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Brian Korinko [D.E. 148];
- g. \$10,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Mitchell Delgado [D.E. 149];
- h. \$10,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Diana Garcia [D.E. 152];
- i. \$2,839.85 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Juan Frometa [D.E. 154];

j. \$61,689.96 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Marla Jacobson [D.E. 156];

k. \$99,992.23 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Robert Rozett [D.E. 157];

l. \$60,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Kenneth & Annette Valdespino [D.E. 159];

m. \$2,500.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Richard Litsky [D.E. 160];

n. \$340.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Iris Altman [D.E. 161];

o. \$5,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Lorenzo Fagan [D.E. 162];

p. \$7,147.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Alissa Mauro [D.E. 163];

q. \$3,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Shebella Edwards Oliver [D.E. 164];

r. \$2,099.67 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Judith Hy [D.E. 166];

s. \$22,500.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Miranda Keough [D.E. 167];

t. \$50,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to William Rundell [D.E. 168];

u. \$7,500.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Carmen Teresa Espina [D.E. 169];

v. \$82,704.41 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Mercedes Zota [D.E. 171];

w. \$3,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Delores Schneider [D.E. 172];

x. \$88,017.37 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to John Figueroa [D.E. 173];

y. \$37,541.31 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Tim Davis [D.E. 174];

z. \$6,228.30 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Brian A. Baudrit [D.E. 175];

aa. \$9,954.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Judith Mencke & Frank Garza [D.E. 177];

bb. \$10,000.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Maria Prunskis [D.E. 183]; and

cc. \$82,789.00 contained in or derived from (BA5) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Warren Sapp [D.E. 184].

2. In addition, on September 1, 2010, the Court entered an Order Approving the Stipulation and Settlement Agreement between the United States and Regions Bank [D.E. 597]. According to the Stipulation and Settlement Agreement, Regions Bank is a bona fide purchaser for value of the right, title or interest in the sum of \$2,195,051.00 and was at the time of the purchase

reasonably without cause to believe that the \$2,195,051.00 was subject to forfeiture. Thus, \$2,195,051.00, identified as part of BA18 at D.E. 134. pp. 13,14, was dismissed from the Preliminary Order of Forfeiture, and is to be disbursed to Regions Bank.

3. Also on September 1, 2010, the Court entered an Order Approving Government's Final Report as to Restitution [D.E. 598]. Said Order approved the Final Restitution Report and prioritized the claims of certain non-investor victims and ordered the following disbursements:

- a. \$2,500.00 to Evelyn Adamo;
- b. \$100,000.00 to Jaime Alvarez;
- c. \$502.00 Yolanda Foster;
- d. \$4,944.62 to Enid Griffiths;
- e. \$17,331.59 to Doris M. Inverso;
- f. \$48,768.37 to William Jaworski;
- g. \$37,994.00 to Beatriz Lopez;
- h. \$10,000.00 to Servando Melchor;
- i. \$10,000.00 to Mamita Morrison;
- j. \$31,086.22 to Kenneth O'Brien & Molly O'Brien;
- k. \$733.90 to Nadine Robin;
- l. \$25,000.00 to Joan Weissberg;
- m. \$54.07 to Brian Korinko;
- n. \$7.77 to Robert Rozett;
- o. \$353.00 to Alissa Mauro;
- p. \$1,500.00 to Mercedes Zota;

- q. \$1,982.63 to John Figueroa;
- r. \$46.00 to Judith Mencke & Frank Garza; and
- s. \$5,000.00 to Steven Bitton.

4. On September 3, 2010, the Court entered an Order to Amend and/or Clarify Order Approving Government's Final Report as to Restitution. The Order stated that "with respect to the individuals listed in DE 598 that are represented by the Lehrman law firm, those moneys shall be transferred to the Lehrman law firm trust account for a period of fifteen days, thus allowing the Trustee to file any claim for fees or costs." [D.E. 601].

5. With regard to the Verified Petition filed by the Chapter 11 Trustee (the "RRA Trustee") as to the bank accounts in the name of Rothstein Rosenfeldt Adler, P.A. [D.E. 192], the Court initially found the RRA Trustee had proven by a preponderance of the evidence that he had a superior interest to that of the Defendant at the time of the acts that gave rise to the forfeiture as to certain amounts in BA2, BA3, BA5, BA9, BA15 and BA18. *See* Order Re: 21 U.S.C. § 853(n) Claims. [D.E. 579].

6. However, on September 8, 2010, the United States filed a Motion for Partial Reconsideration of Order Re: 21 U.S.C. § 853(n) Claims [D.E. 609] with regard to the Court's finding that the Chapter 11 Trustee had an interest in BA2, BA3, and BA5. After full briefing, on October 14, 2010, the Court entered an Order Granting in Part and Denying in Part the United States' Motion for Partial Reconsideration. [D.E. 637].

7. In all, pursuant to the Order Re: 21 U.S.C. § 853(n) Claims [D.E. 579] and Order Granting in Part and Denying in Part the United States' Motion for Partial Reconsideration [D.E. 637], the Court's February 1, 2011 First Final Order of Forfeiture found that the RRA Trustee had

a superior interest to that of the Defendant at the time of the acts that gave rise to the forfeiture in certain amounts contained in or derived from certain bank accounts and ordered the following disbursements:

a. approximately \$93,504.50 contained in or derived from (BA05) Gibraltar Bank account 50015214 shall not be forfeited and shall be transferred to Herbert Stettin, Chapter 11 Trustee of Rothstein Rosenfeldt Adler, P.A.;

e. approximately \$54,021.27 contained in or derived from (BA09) Toronto Dominion Bank, N.A. account 6860291266 shall not be forfeited and shall be transferred to Herbert Stettin, Chapter 11 Trustee of Rothstein Rosenfeldt Adler, P.A.;

f. approximately \$20,080.00 contained in or derived from (BA15) Toronto Dominion Bank, N.A. account 6861077714 shall not be forfeited and shall be transferred to Herbert Stettin, Chapter 11 Trustee of Rothstein Rosenfeldt Adler, P.A.; and

h. approximately \$28,497.07 contained in or derived from (BA18) Toronto Dominion Bank, N.A. account 6860291274 shall not be forfeited and shall be transferred to Herbert Stettin, Chapter 11 Trustee of Rothstein Rosenfeldt Adler, P.A.

[D.E. 708 pp. 28-29].

8. On February 1, 2011, the disbursements ordered in favor of the third party claimants and Regions Bank were also recognized/acknowledged in the First Final Order of Forfeiture [D.E. 708, p.p. 3, 23-26].

9. The RRA Trustee recognizes the superior interest of, and does not object to the distribution of funds to, the third party claimants, Regions Bank, or the restitution priority victims. [See D.E. 671, p.p. 3-4 and 672].

10. Sixty days have passed since the entry of the First Final Order Of Forfeiture and, other than the Notice of Appeal filed by the RRA Trustee, no other third party has filed a Notice of Appeal or any other objection. [See Fed. R. App. P. 4(a)(1)(B)].

11. Any objections to this Notice shall be filed no later than April 15, 2011.

Accordingly, the United States hereby notices its intent to disburse the funds as described above.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 8, 2011, I electronically filed the foregoing Amended Notice of Intent to Disburse Funds to Certain Third-Party Claimants and Restitution Priority Victims through CM/ECF.

By: */s/Evelyn B. Sheehan*
Evelyn B. Sheehan
Assistant United States Attorney